IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

R.S.A. No. 147 of 1995

Decided on: June 26, 2007

Jagar Nath and others **...Appellants.**

VERSUS

Munshi Ram and others **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellants: **Mr. Bhupender Gupta, Sr. Advocate, with Ms. Charu Gupta, Advocate.**

For the respondents: **Mr. G.D. Verma, Sr. Advocate, with Mr. B.C. Verma, Advocate.**

Surjit Singh, Judge (Oral)

Appellants, hereinafter called defendants, are aggrieved by the judgment and decree dated 26.12.1994 of learned District Judge, Bilaspur whereby affirming the decree dated 21.11.1985 passed by the trial Court, appeal has been dismissed.

2. First the relevant facts may be noticed. Late Shri Bali Ram, now represented by respondents No. 1 and 2 (Munshi Ram and Lala Ram) filed a suit for possession of land measuring 13 Bighas 18 Biswas, entered against Khewat No. 14, Khatoni No. 37, Khasra Nos. 137, 274, 275, 276 and 286, situated in village Jol Plakhin, Pargana Tiun, Tehsil Ghumarwin, District Bilaspur, pleading the following cause of action. There lived a man by the name of Gursaran. He had three sons, named

---

Whether reporters of Local Papers may be allowed to see the Judgment?

deceased plaintiff Bali Ram, one Megha and one Ganga Ram on the death of Gursaran, his aforesaid three sons inherited his estate, including the suit property. Ganga Ram had a son, named Hari Singh. On the death of Ganga Ram, his son Hari Singh inherited his estate which consisted of the suit property. Unfortunately, Hari Singh died at a young age. His estate was inherited by his widow Sunehru and mother Manbhari. Susnehru and Manbhari sold the suit land, inherited by them from Hari Singh, in favour of four persons, named Jangi Ram, Mehler and Budhu, the predecessor of the present appellants and proforma respondents hereinafter called defendants. Sale was made by a registered deed on 29.4.1997 B.K. Bali Ram and Megha, being the reversioners, challenged the sale on the ground that Sunehru and Manbhari had inherited only life estate and hence they had no authority to sell the property. The sale deed was set aside by the Civil Court vide decree dated 27.6.1949 (Ext. P-2). It appears that Sunehru re-married during the pendency of the aforesaid suit filed by Bali Ram and Megha. Therefore, her share in the suit property, which she inherited from Hari Singh, was mutated in favour of Manbhari, mother of Hari Singh. On 22.5.1967 Budhu, one of the four transferees, and two sons of Jangi Ram, another transferee, re-transferred 5/12th share equivalent to 5 Bighas 14 Biswas area out of the suit land in favour of Manbhari, vide mutation No. 386. Manbhari on 29.5.1978 transferred this very share in favour of Ram Krishan, one of the grand sons of aforesaid Jangi. Manbhari died on 7.4.1981. Soon after her death, deceased plaintiff Bali Ram filed a suit for possession of the suit land. During the pendency of the suit, vide order dated 17.4.1982 Paras Ram, a son of Megha, who was one of the co-plaintiffs with Bali Ram in the suit in which decree Ext. P-2 had been passed, setting aside the sale by Manbhari and Sunehru,

was also impleaded as plaintiff. Initially he was impleaded as proforma defendant. Plaintiffs claimed that on the death of Manbhari they had become entitled to the possession of the suit land.

3. The suit was contested by the appellants / defendants and the proforma defendants on various grounds. It was alleged that the plaintiffs' claim was barred by limitation, the suit was bad for non-joinder of necessary parties, valuation of the suit for the purposes of court fee and jurisdiction had not been done properly and the suit was not maintainable. It was pleaded that relinquishment made by Jangi's sons and Budhu in respect of 5/12th share in the suit land was lawful and valid and the subsequent sale of the said share by Manbhari in favour of defendant No. 10, one of the grand sons of Jangi, was also valid and lawful. It was pleaded that defendants had been coming in possession of the suit land for more than twelve years and their possession was open, hostile, as of right and hence they had acquired title by prescription. This plea of adverse possession was taken by them with respect to 7/12th share of the suit land, i.e. land other than that which Manbhari re-sold to defendant No. 10 in the year 1978.

4. Trial Court framed various issues based on the pleadings of the parties and after holding the trial and considering the evidence on record, gave the findings that so far as 5/12th share of the land, which had been re-sold by Manbhari in the year 1978, the plaintiffs had no legal right to claim its possession. As regards remaining 7/12th share of the land, it was held that the sale deed in favour of the appellants / defendants and proforma respondents / defendants, having been set aside by the decree Ext. P-2, the defendants had no right or title to remain in possession after the death of Manbhari as their possession after the passing of the aforesaid decree was on behalf of Manbhari.

Plea of adverse possession set up by the defendants was rejected. Consequently a decree for possession of 7/12th share of the suit land was passed. Appellants went in appeal to the Court of District Judge. Learned District Judge affirmed the findings and the decree of the trial Court.

5. The present appeal was admitted on the following substantial questions of law:-

1. Whether the share of Smt. Sunehru could not be subject- matter of the suit on account of her re-marriage and inheritance of the share of Smt. Manbhari thereafter?
2. Whether the right of the plaintiff with respect to Smt. Sunheuru was barred by limitation, are the findings rendered by both the learned Courts below that the said interest was indivisible are unsustainable in the eyes of Law?
3. Whether both the learned Courts below have misunderstood and misapplied the provisions of Section 14 of the Hindu Succession Act?
4. Whether the right of a reversioner in decree is perpetual even if the right which accrued at one point of time became barred by lapse of statutory time, are the findings of the courts below that Smt. Manbhari did not acquire the ownership by adverse possession not sustainable?
5. What is the effect of re-conveyance of the property by relinquishment by alienees in favour of alienors, does that act bar the right of the Reversioner under the Decree?

6. The only point that has been urged by the learned counsel for the appellants is that on account of the coming into force of the Hindu Succession Act, 1956, Manbhari became the absolute owner of the suit property by virtue of the provisions of Section 14(1) of the said Act and as a consequence thereof, the declaratory decree, passed in favour of the predecessors of the plaintiffs / respondents became a nullity and hence

the plaintiffs cannot claim the possession of the suit land on the strength of the said decree. In support of this argument, learned counsel places reliance upon a judgment of the Hon'ble supreme Court in **Shakuntla Devi vs. Kamla and others,** [(2005) 5 SCC 390].

7. The facts of the case cited as precedent by the learned counsel were different. A man who had two wives and a daughter from a third wife, made a will in favour of his two wives and the daughter from the third wife. It was recited in the will that the two wives would have only life estate and on their death, the property would revert to the daughter. One of the two wives died in the year 1939 and her life estate was inherited by the other wife. The surviving wife of the testator, named Uttamdassi, on 28.11.1958, that is to say after coming into force the Hindu Succession Act, 1956, sold a part of the property to one Sandeep. She also made gift of another portion of the property in favour of another person, who further sold that property to another person. By that time the daughter of the testator had died. A daughter of that daughter challenged the alienation by Uttamdassi by filing a declaratory suit. That suit was decreed and decree became final as no further appeal was carried. On 24.5.1975 Uttamdassi gifted a portion of the suit property in favour of another person. That gift was also challenged by filing a declaratory suit. The suit was also decreed. That decree also became final on account of no appeal having been filed. After the death of Uttamdassi, suit was filed by the heirs of the daughter of the original testator for recovery of the possession of the property, gifted by Uttamdassi in the year 1975. Hon'ble supreme Court held that when that decree was passed, the law on the point stood declared and settled by it (the Supreme Court) in **V. Tulasamma vs. Sesha Reddy,** [(1977) 3 SCC 99], per which property gotten under a will as a limited owner also

became the absolute property of the beneficiary by virtue of the provisions of Section 14 and hence the subsequent decree was contrary to law and not operative as res judicata. The Court specifically held that this second declaratory decree with regard to the gift of 1975 was contrary to the law declared in the aforesaid V.Tulasamma's case, meaning thereby that the first decree was not contrary to law, because at that time interpretation of the provision of Section 14 of the Hindu succession Act was different.

8. In the present case, decree was obtained in the year 1948 A.D. when the Hindu Succession Act, 1956 had not even come into force. That means the decree was in accordance with the law then existing and, therefore, the decree cannot be said to be illegal or a nullity. Thus, the precedent relied upon by the learned counsel is not applicable to the facts of the case.

9. In the present case what has happened is that transfer was made in favour of the defendants' predecessors in the year 1946. As per law then prevailing, the women had limited right in the property. Sale made by Sunehru and Manbhari in favour the defendants' predecessors was challenged by filing suit, which was decreed on 27.6.1949 vide decree Ext. P-2. It appears that after the passing of the decree, the predecessors of the appellants / defendants and after their death the appellants / defendants remained in possession of the alienated property to the extent of 7/12th share. When the Hindu Succession Act, 1956 came into force, Manbhari was out of possession, hence she was not entitled to the benefit of Section 14 of the Hindu Succession Act, i.e. enlargement of women's estate into absolute ownership. The Hon'ble Supreme Court in **Naresh Kumari (dead) by L.Rs. and another vs. Shakshi Lal (dead) by L.Rs. and another**, (AIR 1999 SC 928) has held

that in such a case after the death of the alienor woman, the property reverts to the reversionaries even if it is in the hands of the alienees.

10. In view of the law declared by the Hon'ble Supreme Court in Naresh Kumari's case (supra), no fault can be found with the decree passed by the trial Court in favour of the respondents / plaintiffs and against the defendants and proforma defendants.

11. No other point has been urged by the learned counsel for the appellants.

12. In view of the above stated position, all the substantial questions are answered against the appellants and in favour of the respondents / plaintiffs. Consequently appeal is dismissed.

June 26, 2007 (BC) **(Surjit Singh)**
Judge